

**Notice of Allowability**

Application No.

10/698,086

Examiner

Zachariah Lucas

Applicant(s)

BRUS ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment received by the Office on July 24, 2006.
2. ☒ The allowed claim(s) is/are 1, 7, 10, 12 and 14-16.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                 |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>8-15-06</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                   |
|   | 9. <input type="checkbox"/> Other _____.  |

### **DETAILED ACTION**

1. Claims 1, 7, 10, 12, and 14-16 are pending in the application.
2. In the prior action, mailed on May 2, 2006, claims 1-7, 10, and 12-16 were pending and rejected. The Applicant's Response of July 24, 2006 amended the specification and provided arguments in traversal of the rejections of record.
3. Claims 1, 7, 10, 12, and 14-16 are pending and allowed as amended below.

### **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kelly A. Echols on August 15, 2006.

The application has been amended as follows:

In claims 1 and 12, the phrase "(represented by cells as deposited with the European Collection of Cell Cultures [ECACC] under accession number 96022940) is deleted from subpart (a) of the claims and replaced with the phrase - - as deposited with the European Collection of Cell Cultures [ECACC] under accession number 96022940- - .

In claims 1 and 12, the phrase - - human embryonic retina- - is inserted between the terms “PER.C6<sup>TM</sup>” and “cell” in subparts (a) and (b) of claim 1, and in subpart (a) of claim 12.

These amendments were made to clarify that the deposited cells were not merely representative of, but show the identity of, the PER.C6 cells; and to provide proper generic language in each instance where the trademarked “PER.C6” cells are referred to. See e.g., MPEP 608.01(v). In the present case, reference to the trademarked PER.C6 cells is not considered indefinite in view of the identification of such cells as the deposited cells.

***Claim Rejections - 35 USC § 112***

5. **(Prior Rejection- Withdrawn)** Claims 1, 7, 10, 12, and 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement because the application had not met each of the requirements for the submission of a deposit (with reference to the PER.C6 cells) under 37 CFR.1.809(d). In particular, the application did not include the full name, address, and date of deposit in the application. In view of the amendment of the specification, the rejection is withdrawn.

***Claim Rejections - 35 USC § 103***

6. **(Prior Rejections- Withdrawn)** Claims 1, 7, 10, 12, and 16 were rejected under 35 U.S.C. 103(a) as being obvious over Burk et al. (WO 91/15573- of record in the October 2003 IDS) in view of either of the Pau et al. references U.S. 2006/0051747 or U.S. 2006/0063261. Claims 1-7, 12, and 14-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Burk in view of either of the Pau et al. references as applied to claims 1, 7, 10, 12, and 16 above, and further in view of Halliday et al. (WO 99/51776- of record in the October 2003 IDS). It was noted in the prior action that the Pau references named a common inventor and assignee with the

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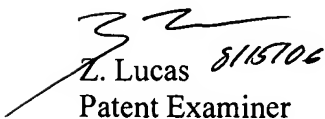
present application, and qualified as art only under 35 U.S.C. 102(e). In traversal of the rejection, the attorney of record has submitted a statement that, at the time the inventions of the current application were made, the present application and the Pau applications were commonly owned. In view of these statements, the rejection is withdrawn as the Pau references are excluded as prior art under 35 U.S.C. 103(c).


***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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